



April 1, 2005

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## ENGROSSED HOUSE BILL No. 1165

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DIGEST OF HB 1165 (Updated March 29, 2005 10:26 pm - DI 106)

**Citations Affected:** IC 23-1.

**Synopsis:** Corporate law issues. Permits a corporate document to be executed by a registered agent, certified public accountant, or attorney employed by the business entity. Defines as an "other entity" certain business entities that are neither converting nor surviving entities, and establishes a procedure by which an other entity may convert its business form. Sets forth requirements for other business entities to merge. Permits notice of a shareholders' meeting to be transmitted by any class of United States mail if notice of the meeting is posted on the company's web site at least 30 days before the meeting is scheduled to take place.

**Effective:** July 1, 2005.

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### Messer, Crooks, Davis

(SENATE SPONSORS — LONG, BRODEN)

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January 6, 2005, read first time and referred to Committee on Commerce, Economic Development and Small Business.

January 27, 2005, reported — Do Pass.

January 31, 2005, read second time, amended, ordered engrossed.

February 1, 2005, engrossed. Read third time, passed. Yeas 96, nays 0.

#### SENATE ACTION

February 14, 2005, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.

March 31, 2005, amended, reported favorably — Do Pass.

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EH 1165—LS 7552/DI 106+



April 1, 2005

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

## ENGROSSED HOUSE BILL No. 1165

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A BILL FOR AN ACT to amend the Indiana Code concerning  
business and other associations.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 23-1-18-1 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) A document must  
3 satisfy the requirements of this section, and of any other section that  
4 adds to or varies these requirements, to be entitled to filing by the  
5 secretary of state.  
6 (b) This article must require or permit filing the document in the  
7 office of the secretary of state.  
8 (c) The document must contain the information required by this  
9 article. It may contain other information as well.  
10 (d) The document must be typewritten or printed, legible, and  
11 otherwise suitable for processing.  
12 (e) The document must be in the English language. A corporate  
13 name need not be in English if written in English letters or Arabic or  
14 Roman numerals, and the certificate of existence required of foreign  
15 corporations need not be in English if accompanied by a reasonably  
16 authenticated English translation.  
17 (f) The document must be executed:

EH 1165—LS 7552/DI 106+



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(1) by the chairman of the board of directors of the domestic or foreign corporation or by any of its officers;

(2) if directors have not been selected or the corporation has not been formed, by an incorporator; ~~or~~

(3) if the corporation is in the hands of a receiver, trustee, or other court appointed fiduciary, by that fiduciary; **or**

**(4) by:**

**(A) a registered agent;**

**(B) a certified public accountant; or**

**(C) an attorney;**

**employed by the business entity.**

(g) Except as provided in subsection (k), the person executing the document shall sign it and state beneath or opposite the signature the person's name and the capacity in which the person signs. A signature on a document authorized to be filed under this article may be a facsimile. The document may but is not required to contain:

(1) the corporate seal;

(2) an attestation by the secretary or an assistant secretary; and

(3) an ~~acknowledgement~~, **acknowledgment**, verification, or proof.

(h) If the secretary of state has prescribed a mandatory form for the document under section 2 of this chapter, the document must be in or on the prescribed form.

(i) The document must be delivered to the office of the secretary of state for filing as described in section 1.1 of this chapter and the correct filing fee must be paid in the manner and form required by the secretary of state.

(j) The secretary of state may accept payment of the correct filing fee by credit card, debit card, charge card, or similar method. However, if the filing fee is paid by credit card, debit card, charge card, or similar method, the liability is not finally discharged until the secretary of state receives payment or credit from the institution responsible for making the payment or credit. The secretary of state may contract with a bank or credit card vendor for acceptance of bank or credit cards. However, if there is a vendor transaction charge or discount fee, whether billed to the secretary of state or charged directly to the secretary of state's account, the secretary of state or the credit card vendor may collect from the person using the bank or credit card a fee that may not exceed the highest transaction charge or discount fee charged to the secretary of state by the bank or credit card vendor during the most recent collection period. This fee may be collected regardless of any agreement between the bank and a credit card vendor or regardless of

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any internal policy of the credit card vendor that may prohibit this type of fee. The fee is a permitted additional charge under IC 24-4.5-3-202.

(k) A signature on a document that is transmitted and filed electronically is sufficient if the person transmitting and filing the document:

(1) has the intent to file the document as evidenced by a symbol executed or adopted by a party with present intention to authenticate the filing; and

(2) enters the filing party's name on the electronic form in a signature box or other place indicated by the secretary of state.

SECTION 2. IC 23-1-29-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) A corporation shall notify shareholders of the date, time, and place of each annual and special shareholders' meeting no fewer than ten (10) nor more than sixty (60) days before the meeting date. Unless this article or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting.

(b) Unless this article or the articles of incorporation require otherwise, notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called.

(c) Notice of a special meeting must include a description of the purpose or purposes for which the meeting is called.

(d) If not otherwise fixed under section 7 of this chapter, the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting is the close of business on the day before the first notice is delivered to shareholders.

(e) Unless the bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under section 7 of this chapter, however, notice of the adjourned meeting must be given under this section to persons who are shareholders as of the new record date.

**(f) A corporation may give notice of a shareholders' meeting under this section by mailing the notice, postage prepaid, through the United States Postal Service, using any class or form of mail, if:**

**(1) the shares to which the notice relates are of a class of securities that is registered under the Exchange Act (as defined in IC 23-1-43-9); and**

**(2) the notice and the related proxy or information statement required under the Exchange Act (as defined in IC 23-1-43-9)**

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are available to the public, without cost or password, through the corporation's Internet web site not fewer than thirty (30) days before the shareholders' meeting.

SECTION 3. IC 23-1-38.5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. The following definitions apply throughout this chapter:

(1) "Converting entity" means:

(A) a domestic business corporation or a domestic other entity that adopts a plan of entity conversion; or

(B) a foreign other entity converting to a domestic business corporation.

**(2) "Other entity" means a limited liability company, limited liability partnership, limited partnership, business trust, real estate investment trust, or any other entity that is formed under the requirements of applicable law and that is not described in subdivision (1) or (3).**

~~(2)~~ (3) "Surviving entity" means the corporation or other entity that is in existence immediately after consummation of an entity conversion under this chapter.

SECTION 4. IC 23-1-38.5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. This chapter may not be used to effect a transaction that:

(1) converts an insurance company organized on the mutual principle to a company organized on a stock share basis;

(2) converts a nonprofit corporation to a domestic corporation or other ~~business~~ entity; or

(3) converts a domestic corporation or other ~~business~~ entity to a nonprofit corporation.

SECTION 5. IC 23-1-38.5-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 13. (a) After conversion of a domestic business corporation to a domestic other entity has been adopted and approved as required by this chapter, articles of entity conversion must be executed on behalf of the corporation by any officer or other duly authorized representative. The articles must:

(1) set forth the name of the corporation immediately before the filing of the articles of entity conversion and the name to which the name of the corporation is to be changed, which must satisfy the organic law of the surviving entity;

(2) state the type of other entity that the surviving entity will be;

(3) set forth a statement that the plan of entity conversion was duly approved by the shareholders in the manner required by this

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chapter and the articles of incorporation; and

(4) if the surviving entity is a filing entity, either contain all of the provisions required to be set forth in its public organic document and any other desired provisions that are permitted, or have attached a public organic document, except that, in either case, provisions that would not be required to be included in a restated public organic document may be omitted.

(b) After the conversion of a domestic other entity to a domestic business corporation has been adopted and approved as required by the organic law of the other entity, an officer or another duly authorized representative of the other entity must execute articles of entity conversion on behalf of the other entity. The articles must:

(1) set forth the name of the other entity immediately before the filing of the articles of entity conversion and the name to which the name of the other entity is to be changed, which must satisfy the requirements of IC 23-1-23-1;

(2) set forth a statement that the plan of entity conversion was duly approved in accordance with the organic law of the other entity; and

(3) either contain all of the provisions that IC 23-1-21-2(a) requires to be set forth in articles of incorporation and any other desired provisions that IC 23-1-21-2(b) permits to be included in articles of incorporation, or have attached articles of incorporation, except that, in either case provisions that would not be required to be included in restated articles of incorporation of a domestic business corporation may be omitted.

(c) After the conversion of a domestic other entity to a different domestic other entity has been adopted and approved as required by the organic law of the different other entity, an officer or another authorized representative of the other entity must execute the articles of entity conversion on behalf of the other entity. The articles must:

(1) set forth the name of the other entity immediately before the filing of the articles of entity conversion and the name to which the name of the other entity is to be changed, which must satisfy the requirements of IC 23-1-23-1;

(2) set forth a statement that the plan of entity conversion was approved in accordance with the organic law of the other entity; and

(3) if the surviving entity is a filing entity, either contain all the provisions required to be set forth in its public organic document and any other desired provisions that are permitted or have attached a public organic document, except that, in either case,

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provisions that would not be required to be included in a restated public organic document may be omitted.

(d) After the conversion of a foreign other entity to a domestic business corporation has been authorized as required by the laws of the foreign jurisdiction, articles of entity conversion must be executed on behalf of the foreign other entity by any officer or authorized representative. The articles must:

(1) set forth the name of the other entity immediately before the filing of the articles of entity conversion and the name to which the name of the other entity is to be changed, which must satisfy the requirements of IC 23-1-23-1;

(2) set forth the jurisdiction under the laws of which the other entity was organized immediately before the filing of the articles of entity conversion and the date on which the other entity was organized in that jurisdiction;

(3) set forth a statement that the conversion of the other entity was duly approved in the manner required by its organic law; and

(4) either contain all of the provisions that IC 23-1-21-2(a) requires to be set forth in articles of incorporation and any other desired provisions that IC 23-1-21-2(b) permits to be included in articles of incorporation, or have attached articles of incorporation, except that, in either case, provisions that would not be required to be included in restated articles of incorporation of a domestic business corporation may be omitted.

(e) After the conversion of a foreign other entity to a different foreign other entity has been authorized as required by the laws of the foreign jurisdiction, the articles of entity conversion must be executed on behalf of the foreign other entity by any officer or authorized representative. The articles must:

(1) set forth the name of the other entity immediately before the filing of the articles of entity conversion and the name to which the name of the other entity is to be changed, which must satisfy the requirements of IC 23-1-23-1;

(2) set forth the jurisdiction under the laws of which the other entity was organized immediately before the filing of the articles of entity conversion and the date on which the other entity was organized in that jurisdiction;

(3) set forth a statement that the conversion of the other entity was approved in the manner required by its organic law; and

(4) if the surviving entity is a filing entity, either contain all the provisions required to be set forth in its public organic document and any other desired provisions that are permitted or have

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attached a public organic document, except that, in either case, provisions that would not be required to be included in a restated public organic document may be omitted.

(f) The articles of entity conversion must be delivered to the secretary of state for filing and take effect at the effective time provided in IC 23-1-18-4.

(g) If the converting entity is a foreign other entity that is authorized to transact business in Indiana under a provision of law similar to IC 23-1-49, its certificate of authority or other type of foreign qualification is canceled automatically on the effective date of its conversion.

**(h) After the conversion of a foreign corporation to a different foreign other entity has been authorized as required by the law of the foreign jurisdiction, the articles of entity conversion must be executed on behalf of the foreign other entity by any officer or authorized representative. The articles must:**

**(1) set forth the name of the foreign corporation immediately before the filing of the articles of entity conversion and the name to which the name of the foreign corporation is to be changed, which must satisfy the requirements of IC 23-1-23-1;**

**(2) set forth the jurisdiction under the law under which the foreign corporation was organized immediately before the filing of the articles of entity conversion and the date on which the other entity was organized in that jurisdiction;**

**(3) set forth a statement that the conversion of the foreign corporation was approved in the manner required by its organic law; and**

**(4) if the surviving entity is a filing entity, either contain all the provisions required to be set forth in its public organic document and any other desired provisions that are permitted or have attached a public organic document, except that, in either case, provisions that would not be required to be included in a restated public organic document may be omitted.**

SECTION 6. IC 23-1-40-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. (a) As used in this section, "other business entity" means a limited liability company, limited liability partnership, limited partnership, business trust, real estate investment trust, or any other entity that is formed under the requirements of applicable law and is not otherwise subject to section 1 of this chapter.

(b) As used in this section, "surviving entity" means the corporation,

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limited liability company, limited liability partnership, limited partnership, business trust, real estate investment trust, or any other entity that is in existence immediately after consummation of a merger under this section.

(c) One (1) or more domestic corporations may merge with or into one (1) or more other business entities formed, organized, or incorporated under the laws of Indiana or any other state, the United States, a foreign country, or a foreign jurisdiction if the following requirements are met:

(1) Each domestic corporation that is a party to the merger complies with the applicable provisions of this chapter.

(2) Each domestic other business entity that is a party to the merger complies with the requirements of applicable law.

(3) The merger is permitted by the laws of the state, country, or jurisdiction under which each other business entity that is a party to the merger is formed, organized, or incorporated, and each other business entity complies with the laws in effecting the merger.

(4) The merging entities approve a plan of merger that sets forth the following:

(A) The name of each domestic corporation and the name and jurisdiction of formation, organization, or incorporation of each other business entity planning to merge, and the name of the surviving or resulting domestic corporation or other business entity into which each other domestic corporation or other business entity plans to merge.

(B) The terms and conditions of the merger.

(C) The manner and basis of converting the shares of each domestic corporation that is a party to the merger and the partnership interests, shares, obligations, or other securities of each other business entity that is a party to the merger into partnership interests, interests, shares, obligations, or other securities of the surviving entity or any other domestic corporation or other business entity or, in whole or in part, into cash or other property, and the manner and basis of converting rights to acquire the shares of each domestic corporation that is a party to the merger and rights to acquire partnership interests, interests, shares, obligations, or other securities of each other business entity that is a party to the merger into rights to acquire partnership interests, interests, shares, obligations, or other securities of the surviving entity or any other domestic corporation or other business entity or, in

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whole or in part, into cash or other property.

(D) If a partnership is to be the surviving entity, the names and business addresses of the general partners of the surviving entity.

(E) If a limited liability company is to be the surviving entity and management of the limited liability company is vested in one (1) or more managers, the names and business addresses of the managers.

(F) All statements required to be set forth in the plan of merger by the laws under which each other business entity that is a party to the merger is formed, organized, or incorporated.

(5) The plan of merger may set forth the following:

(A) If a domestic corporation is to be the surviving entity, any amendments to, or a restatement of, the articles of incorporation of the surviving entity, and the amendments or restatement will be effective at the effective date of the merger.

(B) Any other provisions relating to the merger.

**(d) One (1) or more other business entities may merge with or into one (1) or more other business entities formed, organized, or incorporated under the laws of Indiana or under the laws of another jurisdiction, if the following requirements are met:**

**(1) Each business entity that is a party to the merger complies with the applicable provisions of this chapter.**

**(2) Merger is permitted by the laws of the jurisdiction under which each other entity that is a party to the merger is formed, organized, or incorporated, and each other business entity complies with the laws in effecting the merger.**

**(3) The merging entities approve a plan of merger that sets forth the following:**

**(A) The name and jurisdiction of formation, organization, or incorporation of each other business entity intending to merge, and the name of the surviving or resulting other business entity into which each other business entity plans to merge.**

**(B) The terms and conditions of the merger.**

**(C) The manner and basis of converting the partnership interests, shares, obligations, or other securities of the surviving entity or other business entity, in whole or in part, into cash or other property, and the manner and basis of converting rights to acquire partnership interests, shares, obligations, or other securities of the surviving**

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entity or any other business entity, in whole or in part, into cash or other property.

(D) If a partnership is to be the surviving entity, the names and business addresses of the general partners of the surviving entity.

(E) If a limited liability company is to be the surviving entity and management of the limited liability company is vested in one (1) or more managers, the names and business addresses of the managers.

(F) All statements required to be set forth in the plan of merger by the laws under which each other business entity that is a party to the merger is formed, organized, or incorporated.

(4) The plan of merger may set forth any other provisions related to the merger.

~~(d)~~ (e) The plan of merger required by subsection (c)(4) must be adopted and approved by each domestic corporation that is a party to the merger in the same manner as is provided in this chapter.

~~(e)~~ (f) Notwithstanding subsection (c)(4), if the surviving entity is a partnership, a shareholder of a domestic corporation that is a party to the merger does not, as a result of the merger, become a general partner of the surviving entity, and the merger does not become effective under this chapter, unless:

(1) the shareholder specifically consents in writing to become a general partner of the surviving entity; and

(2) written consent is obtained from each shareholder who, as a result of the merger, would become a general partner of the surviving entity;

A shareholder providing written consent under this subsection is considered to have voted in favor of the plan of merger for purposes of this chapter.

~~(f)~~ (g) This section, to the extent applicable, applies to the merger of one (1) or more domestic corporations with or into one (1) or more other business entities.

~~(g)~~ (h) Notwithstanding any other law, a merger consisting solely of the merger of one (1) or more domestic corporations with or into one (1) or more foreign corporations must be consummated solely according to the requirements of this section.

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Commerce, Economic Development and Small Business, to which was referred House Bill 1165, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

BORROR, Chair

Committee Vote: yeas 10, nays 0.

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 HOUSE MOTION

Mr. Speaker: I move that House Bill 1165 be amended to read as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 4-6-2-12 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 12. (a) The following definitions apply throughout this section:**

- (1) "PERF" refers to the public employees' retirement fund established under IC 5-10.3-2-1.
- (2) "Securities" has the meaning set forth in IC 23-2-1-1.
- (3) "Securities fraud" means a violation of:
  - (A) IC 23-2-1;
  - (B) the federal Securities Act of 1933 (15 U.S.C. 77a);
  - (C) the federal Securities Exchange Act of 1934 (15 U.S.C. 78a);
  - (D) the federal Public Utility Holding Company Act of 1935 (15 U.S.C. 79a);
  - (E) the federal Trust Indentures Act of 1939 (15 U.S.C. 77aaa);
  - (F) the federal Investment Advisers Act of 1940 (15 U.S.C. 80b-1);
  - (G) the federal Investment Company Act of 1940 (15 U.S.C. 80a-1);
  - (H) the federal Securities Investor Protection Act of 1970 (15 U.S.C. 77aaa); or
  - (I) the statutes, rules, or regulations of another state that are substantially similar to clauses (A) through (H).

EH 1165—LS 7552/DI 106+



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**(4) "TRF" refers to the Indiana state teachers' retirement fund established under IC 21-6.1-2-1.**

**(b) The attorney general shall investigate the commission or possible commission of securities fraud if there is a reasonable likelihood that the securities fraud affected securities owned by PERF or TRF. The attorney general may request the assistance of the securities commissioner in conducting an investigation under this subsection.**

**(c) Not later than thirty (30) days after the attorney general has completed an investigation under this section, the attorney general shall report the results of the investigation to the legislative council. The attorney general's report to the legislative council must be in an electronic format under IC 5-14-6.**

**(d) If:**

- (1) a civil or administrative action has been filed that relates to a securities fraud described in subsection (b); and**
- (2) intervention is permissible under an applicable statute, court rule, administrative rule or regulation, or other authority;**

**the attorney general shall intervene on behalf of PERF or TRF in the civil or administrative action."**

Page 10, after line 3, begin a new paragraph and insert:

"SECTION 7. IC 23-2-1-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 15. (a) This chapter shall be administered by a division of the office of the secretary of state. The secretary of state shall appoint a securities commissioner who shall be responsible for the direction and supervision of the division and the administration of this chapter under the direction and control of the secretary of state. The salary of the securities commissioner shall be paid out of the funds appropriated for the administration of this chapter. The commissioner shall serve at the will of the secretary of state.

**(b) The secretary of state:**

- (1) shall employ a chief deputy, a senior investigator, a senior accountant, and other deputies, investigators, accountants, clerks, stenographers, and other employees necessary for the administration of this chapter; and**
- (2) shall fix their compensation with the approval of the budget agency.**

The chief deputy, other deputies, the senior investigator, and the senior accountant, once employed under this chapter, may be dismissed only for cause by the secretary of state upon ten (10) days notice in writing

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stating the reasons for dismissal. Within fifteen (15) days after dismissal, the chief deputy, other deputies, the senior investigator, and the senior accountant may appeal to the state personnel board. The state personnel board shall hold a hearing, and if it finds that the appealing party was dismissed for a political, social, religious, or racial reason, the appealing party shall be reinstated to the appealing party's position without loss of pay. In all other cases, if the decision is favorable to the appealing party, the secretary of state shall follow the findings and recommendations of the board, which may include reinstatement and payment of salary or wages lost. The hearing and any subsequent proceedings or appeals shall be governed by the provisions of IC 4-15-2 and IC 4-21.5.

(c) Fees and funds of whatever character accruing from the administration of this chapter shall be accounted for by the secretary of state and shall be deposited with the treasurer of state to be deposited by the treasurer of state in the general fund of the state. Expenses incurred in the administration of this chapter shall be paid from the general fund upon appropriation being made for the expenses in the manner provided by law for the making of those appropriations. However, costs of investigations recovered under sections 16(d) and 17.1(c) of this chapter shall be deposited with the treasurer of state to be deposited by the treasurer of state in a separate account to be known as the securities division enforcement account. The funds in the account shall be available, with the approval of the budget agency, to augment and supplement the funds appropriated for the administration of this chapter. The funds in the account do not revert to the general fund at the end of any fiscal year.

(d) In connection with the administration and enforcement of the provisions of this chapter, the attorney general shall render all necessary assistance to the securities commissioner upon the commissioner's request, and to that end, the attorney general shall employ legal and other professional services as are necessary to adequately and fully perform the service under the direction of the securities commissioner as the demands of the securities division shall require. Expenses incurred by the attorney general for the purposes stated in this subsection shall be chargeable against and paid out of funds appropriated to the attorney general for the administration of the attorney general's office.

(e) Neither the secretary of state, the securities commissioner, nor an employee of the securities division shall be liable in their individual capacity, except to the state, for an act done or omitted in connection with the performance of their respective duties under this chapter.

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(f) The commissioner, subject to the approval of the secretary of state, may adopt rules, orders, and forms necessary to carry out this chapter, including rules and forms concerning registration statements, applications, reports, and the definitions of any terms if the definitions are consistent with this chapter. The commissioner may by rule or order allow for exemptions from registration requirements under sections 3 and 8 of this chapter if the exemptions are consistent with the public interest and this chapter.

(g) The provisions of this chapter delegating and granting power to the secretary of state, the securities division, and the securities commissioner shall be liberally construed to the end that:

- (1) the practice or commission of fraud may be prohibited and prevented;
- (2) disclosure of sufficient and reliable information in order to afford reasonable opportunity for the exercise of independent judgment of the persons involved may be assured; and
- (3) the qualifications may be prescribed to assure availability of reliable broker-dealers, investment advisers, and agents engaged in and in connection with the issuance, barter, sale, purchase, transfer, or disposition of securities in this state.

It is the intent and purpose of this chapter to delegate and grant to and vest in the secretary of state, the securities division, and the securities commissioner full and complete power to carry into effect and accomplish the purpose of this chapter and to charge them with full and complete responsibility for its effective administration.

(h) It is the duty of a prosecuting attorney, as well as of the attorney general, to assist the securities commissioner upon the commissioner's request in the prosecution to final judgment of a violation of the penal provisions of this chapter and in a civil proceeding or action arising under this chapter. If the commissioner determines that an action based on the securities division's investigations is meritorious:

- (1) the commissioner or a designee empowered by the commissioner shall certify the facts drawn from the investigation to the prosecuting attorney of the judicial circuit in which the crime may have been committed;
- (2) the commissioner and the securities division shall assist the prosecuting attorney in prosecuting an action under this section, which may include a securities division attorney serving as a special deputy prosecutor appointed by the prosecuting attorney;
- (3) a prosecuting attorney to whom facts concerning fraud are certified under subdivision (1) may refer the matter to the attorney general; and

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(4) if a matter has been referred to the attorney general under subdivision (3), the attorney general may:

(A) file an information in a court with jurisdiction over the matter in the county in which the offense is alleged to have been committed; and

(B) prosecute the alleged offense.

(i) The securities commissioner shall take, prescribe, and file the oath of office prescribed by law. The securities commissioner, senior investigator, and each deputy are police officers of the state and shall have all the powers and duties of police officers in making arrests for violations of this chapter, or in serving any process, notice, or order connected with the enforcement of this chapter by whatever officer or authority or court issued. The securities commissioner, the deputy commissioners for enforcement, and the investigators comprise the enforcement department of the division and are considered a criminal justice agency for purposes of IC 5-2-4 and IC 10-13-3.

**(j) Upon request of the attorney general, the securities commissioner shall assist the attorney general in a securities fraud investigation under IC 4-6-2-12 concerning securities owned by the public employees' retirement fund (IC 5-10.3-2-1) or the Indiana state teachers' retirement fund (IC 21-6.1-2-1). Expenses incurred by the security commissioner in assisting the attorney general in an investigation under IC 4-6-2-12 shall be paid by the secretary of state from funds appropriated for the administration of this chapter.**

~~(j)~~ **(k)** The securities commissioner and each employee of the securities division shall be reimbursed for necessary hotel and travel expenses when required to travel on official duty. Hotel and travel reimbursements shall be paid in accordance with the travel regulations prescribed by the budget agency.

~~(k)~~ **(l)** It is unlawful for the secretary of state, the securities commissioner, or the securities division's employees to use for personal benefit information that is filed with or obtained by the securities division and that is not made public. No provision of this chapter authorizes the secretary of state, the securities commissioner, or the employees of the securities division to disclose information except among themselves, or when necessary or appropriate, in a proceeding or investigation under this chapter. No provision of this chapter either creates or derogates from a privilege that exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the secretary of state, the securities commissioner, or the securities division or its employees.

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(†) (m) The commissioner may honor requests from interested persons for interpretative opinions and from interested persons for determinations that the commissioner will not institute enforcement proceedings against specified persons for specified activities. A determination not to institute enforcement proceedings must be consistent with this chapter. A person may not request an interpretive opinion concerning an activity that:

- (1) occurred before; or
- (2) is occurring on;

the date that the opinion is requested. The commissioner shall charge a fee of one hundred dollars (\$100) for an interpretative opinion or determination."

Renumber all SECTIONS consecutively.

(Reference is to HB 1165 as printed January 28, 2005.)

CROOKS

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#### COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred House Bill No. 1165, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, delete lines 1 through 17.

Page 2, delete lines 1 through 28.

Page 4, between lines 13 and 14, begin a new paragraph and insert:

"SECTION 3. IC 23-1-29-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) A corporation shall notify shareholders of the date, time, and place of each annual and special shareholders' meeting no fewer than ten (10) nor more than sixty (60) days before the meeting date. Unless this article or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting.

(b) Unless this article or the articles of incorporation require otherwise, notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called.

(c) Notice of a special meeting must include a description of the purpose or purposes for which the meeting is called.

(d) If not otherwise fixed under section 7 of this chapter, the record date for determining shareholders entitled to notice of and to vote at an

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annual or special shareholders' meeting is the close of business on the day before the first notice is delivered to shareholders.

(e) Unless the bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under section 7 of this chapter, however, notice of the adjourned meeting must be given under this section to persons who are shareholders as of the new record date.

**(f) A corporation may give notice of a shareholders' meeting under this section by mailing the notice, postage prepaid, through the United States Postal Service, using any class or form of mail, if:**

- (1) the shares to which the notice relates are of a class of securities that is registered under the Exchange Act (as defined in IC 23-1-43-9); and**
- (2) the notice and the related proxy or information statement required under the Exchange Act (as defined in IC 23-1-43-9) are available to the public, without cost or password, through the corporation's Internet web site not fewer than thirty (30) days before the shareholders' meeting."**

Page 11, delete lines 7 through 42.

Delete pages 12 through 14.

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1165 as reprinted February 1, 2005.)

LONG, Chairperson

Committee Vote: Yeas 10, Nays 0.

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